

Oregon State Bar

2014

Annual Report

Client Assistance Office

January 1, 2014 to December 31, 2014
Report to the Oregon Supreme Court

Scott Morrill

*CAO Manager
Assistant General Counsel*

Troy Wood

Assistant General Counsel

Stacy Owen

Assistant General Counsel

Karen Graham

Intake Coordinator

Jennifer Mount

Intake Specialist

2014 Annual Report of the Oregon State Bar Client Assistance Office

TABLE OF CONTENTS

I. INTRODUCTION	1
II. CAO STAFF OPERATION	2
III. PROGRAM MEASURES	3
IV. BENCHMARK SUMMARY	4
V. CAO STATISTICAL INFORMATION	
Table 1: Source of Complaint	4
Table 2: Nature of Complaint.....	5
Table 3: Type of Matter.....	6
Table 4: Size of Firm	7
Table 5: Disposition (Result).....	7
Table 6: Disposition (Time).....	8
VI. EXAMPLES OF CAO EFFORTS TO RESOLVE PROBLEMS.....	9
VII. CONCLUSION	10

I. INTRODUCTION

This report is the twelfth review of the operations of the Client Assistance Office (CAO) and covers those operations from January 1, 2014, through December 31, 2014. Since August 1, 2003, all inquiries and complaints about members of the Oregon State Bar have been initially screened by CAO. Complaints and inquiries are essentially synonymous terms. CAO accepts complaints in writing, by telephone, e-mail, fax, or in person (BR 2.5(a)). However, CAO requests that any complaint warranting a response from a lawyer be put in writing in order to give the lawyer adequate notice of the nature of the concerns.

Statistics show that of the approximately 1852 matters handled by CAO, approximately 1566 were specific inquiries and 286 were what are characterized as General Information Inquiries (GII) that did not require active intervention or assistance of CAO staff. The balance was uncategorized. In an effort to conserve resources, many short calls are not reported by staff so this report does not accurately account for GII calls. The vast majority of these calls involve questions about whether callers concerns amount to a bar complaint, or referring the client to other resources both inside and outside the bar. It would be an inefficient use of personnel's time to record each of these calls; however, it does lead to a discrepancy between the actual use of the CAO by the general public and that which can be accounted for in this annual report.

CAO staff disposed of about 1784 documented matters in 2014. Consistent with past history, the largest number of complaints, 855 (46.85%) were sent by clients. CAO's efforts to increase paperless filings resulted in 801 complaints received by electronic means. In this reporting period, there were 561 email inquiries, making up approximately 31% of all inquiries for the year; whereas, telephone inquiries accounted for 219 or 12%. As CAO continues to update its paperless processes, and make electronic complaint forms more user friendly, we expect this trend to continue to grow. As previously mentioned, these numbers do not accurately reflect the number of GII calls, and are not meant to diminish the importance of telephone access to the CAO by the general public. Other complaints came from third parties or were generated internally and came by fax or presented in person.

II. CAO STAFF OPERATION

CAO is part of General Counsel's Office and staff reports to General Counsel. There are currently three staff attorneys and two support staff. Scott Morrill finished his first full year as CAO's managing attorney and a third attorney came on board in March.

A significant amount of both lawyer and administrative staff time is spent responding to telephone inquiries concerning attorney conduct, reviewing written complaints and resolving minor issues. If intake staff cannot resolve an issue, it is referred to one of the staff lawyers. Staff lawyers then take steps to resolve the issue by contacting lawyers to reestablish communication with the client, provide the client with a copy of the client's file, or provide other appropriate assistance. Staff attorneys also provide ethics advice to attorneys, write Bar Counsel articles and present at CLE's throughout the year.

All matters submitted to CAO are public records and are entered into an electronic database. As noted above, before CAO staff will require a lawyer to respond formally to concerns that implicate the Oregon RPC's, staff requires that the complaint be put in writing. Exceptions are made to comply with the ADA. If a complaint is not in writing, CAO staff may discuss the matter with the lawyer or the person making the complaint to determine if there is an issue that should be put in writing or if CAO can otherwise assist in resolving the matter or provide information on alternative resources.

CAO attorneys conduct a preliminary review and investigation of written complaints to determine whether there is sufficient evidence to support a reasonable belief that misconduct may have occurred (BR 2.5(b)(2)). If so, the matter is referred to DCO for further investigation. The preliminary review may include telephone contact with the lawyer, correspondence between CAO staff and the lawyer, or other investigation. In 2014, 227 complaints were referred to DCO by CAO for further investigation, in 2013 237 complaints were referred to DCO, in 2012, 245 complaints were referred to DCO, in 2011, 260 complaints were referred to DCO, in 2010, 242 complaints were referred to DCO, and in 2009, 273 complaints were referred to DCO. While the total number referred in 2014 may be the smallest amount in the past five years, it represents a similar percentage (12.44%) to past years. This is explained by the smaller amount of total complaints for the year. CAO believes that the telephone activity of staff has lead to a better educated public and members, which leads to fewer meritless complaints.

If CAO determines there is not sufficient evidence to support a referral to DCO, staff may attempt to resolve the concerns raised by the complainant, to the extent possible and as bar resources permit (BR 2.5(b)(3)). For instance, if the person needs a lawyer but cannot afford one, CAO staff may refer them to legal aid or other low-cost legal services programs. If the matter concerns malpractice or a fee dispute, CAO staff may refer the person to the Professional Liability Fund or explain the bar's fee arbitration/mediation program.

A decision by CAO staff that a complaint is not supported by sufficient evidence may be appealed to General Counsel. General Counsel's decision is final (BR 2.5 (c)). In 2014 194 appeals were affirmed by General Counsel, which amounts to 91.94% of all appeals. This would suggest that CAO lawyers are making the correct decisions in most matters. For comparison: In 2013, 194 appeals (94.17%) were affirmed; in 2012, 153 appeals (92.73%) were affirmed; in 2011, 217 appeals (94.35%) were affirmed; in 2010, 123 appeals (96%) were affirmed; and in 2009, 226 appeals (96%) were affirmed.

Experience gained over the past twelve years of CAO's operation shows that the program reaches a broader range of people than the prior written complaint-based system. By eliminating the need to initiate an inquiry in writing, CAO is a more user-friendly means of addressing concerns about lawyer conduct and is available to a broader range of the public. CAO staff has received calls and letters from lawyers, clients, and the general public indicating the program is a less antagonistic means of attempting to resolve the various issues CAO staff encounters on a daily basis..

III. PROGRAM MEASURES

Measuring the efficiency and effectiveness of CAO is critical to the Court, the public, and the bar. Although there are many ways to evaluate the process, it is important to ensure that the evaluation is statistically based and as accurate as possible. In this report, the following benchmarks are used:

- The number of complaints received;
- The time a complaint was pending at the CAO level (see Table 6);
- The disposition by CAO (see Table 5);
- Number of complaints dismissed or where additional assistance at intake was provided;
- Number of complaints referred to DCO (see Table 5);

- Number of dismissals appealed to General Counsel; and,
- Disposition of appeals to General Counsel.

IV. BENCHMARK SUMMARY

Between January 1, 2014, and December 31, 2014, there were about 1852 complaints made to CAO. The average time a complaint was pending was 29 days (see Table 6). Approximately 14.69% were resolved or dismissed on the initial day of intake. In 2013, 11.63% were disposed of in this same timeframe.

V. CAO STATISTICAL INFORMATION

In addition to the raw numbers of complaints received and disposed of, CAO maintains a variety of statistics to assist the Court, the public, and the bar in understanding the matters processed by CAO staff.

Table 1: SOURCE OF COMPLAINT

Source of Complaint	# Complaints	Percent
Client	855	46.85%
Opposing Party	335	18.36%
Third Party	232	12.71%
Unknown/Unclassified	217	11.89%
Opposing Counsel	68	3.73%
General Inquiry	57	3.12%
Self	28	1.53%
Judge	20	1.10%
CAO	8	0.44%
General Client Assistance	3	0.16%

CAO statistics for 2014 confirm that the most common source of complaints is our members' own clients. Combined with statistics below, it is CAO staff's continued impression that there is a significant failure on the part of many Oregon lawyers to adequately communicate with their clients, or to manage client expectations about the amount of communication to expect. This information has again been provided to the bar's CLE department anticipating that future CLE programs should be developed focusing on communication with clients and keeping clients satisfied. CAO staff also meets with local bar leaders to discuss this issue and educate bar members on this topic. The Unknown/Unclassified entry shows that many in many cases CAO cannot determine who is contacting the bar or their role in any particular legal matter.

Table 2: NATURE OF COMPLAINT

Nature of Complaints/Inquiries	# Complaint	Percent
General Information Inquiry	228	12.49%
Legal Advice	169	9.26%
Dishonesty and Misrepresentation	159	8.71%
Competence and Diligence	150	8.22%
Communication	132	7.23%
Return Client File	83	4.55%
Quality of Services	79	4.33%
Other/Miscellaneous	74	4.05%
Neglect of a Legal Matter	72	3.95%
Outside of the Legal Bounds	58	3.18%
General Client Assistance	58	3.18%
Fee Dispute – excessive/illegal fee	57	3.12%
Malpractice	57	3.12%
Improper Conduct of a Prosecutor	47	2.58%
Conduct Prejudicial to Justice	43	2.36%
Improper Withdrawal	31	1.70%
Client Conflict – Former	30	1.64%
Criminal Conduct	29	1.59%
Unlawful Practice of Law	27	1.48%
Disclosing Confidences/Secrets	27	1.48%
Conflict – Self-Interest	26	1.42%
Rude Behavior	26	1.42%
Fee/Retainer Inquiry	25	1.37%
Judicial Fitness Commission	25	1.37%
Client Conflict – Current	20	1.10%
Contact with Represented Party	18	0.99%
Unclassified	17	0.93%
Preserving Client Funds/Property	15	0.82%
False or Misleading Advertising	7	0.38%
Business Relationship with Client	6	0.33%
Law Referral	5	0.27%
Lawyer Debts	5	0.27%
Trial Conduct	5	0.27%
Ex Parte Communication	4	0.22%
Problem Re Firm Names/Letterhead	4	0.22%
Conflict – Lawyer as a Witness	2	0.11%
Provide an Accounting	2	0.11%
Un-Zealous Conduct	2	0.11%
Sexual Relations with a Client	1	0.05%

This table shows that approximately 23.89% of the complaints received pertain to issues involving clients (neglect of a legal matter, communication, competence and diligence and fees). It should be noted that the CAO database allows only a single entry to describe the nature of the complaint. What one CAO staff member characterizes as quality of service issues another

will characterize as communication. The following categories often have communication as a primary component to the complaint: communication, competence and diligence, neglect of a legal matter, quality of service issues and malpractice. These same categories will include complaints rooted in a lawyer's neglect of a legal matter. Based on these data entry limitations, CAO staff experience shows that these figures support the conclusion that our members' own clients most frequently complain about their lawyer's lack of action and communication. The table also identifies considerable client concerns (9.86%) regarding legal fees charged by lawyers and client property held by lawyers. Many fee related complaints are referred to the bar's fee arbitration/mediation program. CAO lawyers continue to emphasize fee and client property issues at CLE's.

Table 3: TYPE OF MATTER

Type of Matter	# Complaints	Percent
Criminal	651	39.60%
Domestic Relations	232	14.11%
Civil Dispute	201	12.23%
Unknown	79	4.81%
Other	69	4.20%
Probate	54	3.28%
Personal Injury	47	2.86%
Debt Collection	45	2.74%
Litigation	38	2.31%
Estate Planning	33	2.01%
Landlord/Tenant	30	1.82%
Bankruptcy	28	1.70%
Workers Compensation	26	1.58%
Juvenile	23	1.40%
Real Estate	20	1.22%
Business	13	0.79%
Immigration	11	0.67%
Conservatorship	10	0.61%
Social Security	10	0.61%
Labor	7	0.43%
Arbitration	6	0.36%
Guardianship	6	0.36%
Elder Law	2	0.12%
Paternity	1	0.06%
Tax	1	0.06%
Trust Account	1	0.06%

CAO statistics again show that criminal law practice is most likely to generate a complaint. CAO lawyers continue to work with the Oregon Criminal Defense Lawyers Association to

address recurring issues. The CAO manager met with OPDS staff in 2014 to discuss common concerns.

In 2004, the first full year of operation, 893 or 25.62% of all complaints were related to criminal matters. In 2014, that number was 651 or 39.60% of all complaints involved criminal matters. The other figure that stands out is that domestic relations cases are the next category of practice most likely to generate a complaint. In 2014, 232 or 14.11% of all complaints were from this practice area. Criminal matters and domestic relations matters account for over half of all complaints received.

Table 4: SIZE OF FIRM

Firm Size	# Complaints	Percent
Solo	1254	68.75%
2-5	273	14.97%
6-10	107	5.87%
11-25	101	5.54%
26-100	88	4.82%
> 100	1	0.05%

This statistic was requested by the Board of Governors to give the bar an idea of whether a correlation exists between the size of a lawyer's law firm and the number of complaints made to CAO. Table 4 shows that 68.75% of the complaints were directed at solo practitioners. Another 14.97% were directed at lawyers in law firms with five or fewer lawyers. However, this may not be disproportionate to the number of active members that work in small firms. CAO staff will continue to monitor this statistic to see if a continuing legal education seminar should be developed just for such practitioners. CAO has met with the Executive Committee of the Solo and Small Firm Practitioners Section of the bar in the past to discuss CAO operations. CAO remains available to discuss matters of particular interest to this group and others during 2015.

Table 5: DISPOSITION (RESULT)

Disposition Result	# Complaints	Percent
Dismissed	1102	60.42%
Information Provided	362	19.85%
Referred to Discipline	227	12.45%
Resolved by CAO	40	2.19%
Referred to RIS	29	1.59%
Referred to Other	8	0.44%
Referred to OPDS	7	0.38%
Referred to Fee Arbitration	4	0.22%
Advised to File a Complaint	2	0.11%
Diversion Referral	1	0.05%
Referred to UPL	1	0.05%

This table shows that a significant number of complaints received by CAO are being resolved without referral to DCO. However, as of December 31, 2014, 227 (12.45% of all complaints) cases had been referred to DCO for further investigation based on a finding of sufficient evidence. These statistics will be compared with those maintained by DCO reflecting disposition of these referrals to develop a better understanding of the effectiveness of the CAO program. This table does not reflect the fact that matters dismissed were often accompanied by options the complaining party might consider to address their concerns.

Table 6: DISPOSITION (TIME)

Disposition Time	# Complaints	Percent	Avg. # Days
Same Day	262	14.69%	0
1-2 Days	304	17.04%	2
3-6 Days	415	23.26%	5
1-2 Weeks	135	7.57%	9
< 1 Month	110	6.17%	23
31-61 Days	225	12.61%	45
< 6 months	314	17.60%	91
Over 6 months	17	0.95%	343

Average: 29 days

Statistics for 2014 continue to show that CAO staff is promptly resolving most matters. 14.69% were resolved the same day. This is over 3% better than last year. By combining statistics, we discover that over 62% of all CAO complaints were resolved in less than two weeks. In 2014, this two-week response time was 7% more efficient than it was in 2013. The average disposition time was 29 days, which improved our 2013 average by 9 days.

In cases where CAO requests a written response from a lawyer, the disposition time can increase significantly. The time devoted to any single complaint and the scope of CAO's investigation to make a sufficient evidence determination are still being evaluated by CAO and DCO. CAO staff continues to believe it is quickly weeding out groundless complaints, freeing DCO staff to focus on investigating more serious matters as well as prosecutions authorized by the State Professional Responsibility Board. Brief telephone calls that require simple information such as "how do I file a bar complaint" or a discussion about information on the bar's Web site are no longer recorded by staff. Again, these undocumented calls have an impact on all CAO statistics, as they divert staff's attention from documented matters

VI. EXAMPLES OF CAO EFFORTS TO RESOLVE PROBLEMS

As mentioned above, if a matter does not implicate the rules, CAO staff may retain the matter and attempt to resolve the concerns raised by the person making the inquiry to the extent possible and as bar resources permit. Our disciplinary model is based upon misconduct already having occurred; but in many cases CAO can intervene and resolve the issue before the threshold of misconduct is crossed. Many times this may involve just pointing out the applicable ethical rule to the lawyer. In other cases, it may involve helping the client understand that their expectations are beyond industry standards.

For instance, CAO received numerous complaints where clients had trouble obtaining their files from their lawyers. Rather than send a letter giving the lawyer 21 days to respond, as DCO staff would have done under the old system, CAO staff often telephones the lawyer, discusses the problem and the possible complications of withholding the file, and frequently convinces the lawyer to turn over the file to the client without further delay.

As noted in prior reports, CAO receives many complaints in which staff did not see an ethical issue with a lawyer's conduct, but recognized that the person needed help finding an appropriate agency for assistance. CAO staff has referred people to the Ombudsman for injured workers to obtain information concerning their pending claims or the Department of Justice for consumer protection assistance. The DOJ often refers people to CAO for matters involving the services provided by lawyers. While there are situations that CAO cannot address or resolve, staff takes the time to explain, as best they can, why the bar is not the appropriate source of assistance. CAO also discusses possible ethics concerns with members in an effort to guide members into complying with their ethical obligations.

CAO staff continues to direct attention to the communication issues between lawyers and clients that may lead to serious problems. Often a client will contact CAO staff saying that their lawyer will not return calls. Unless the situation is so severe as to constitute neglect of a legal matter, CAO staff may call the lawyer and explain that CAO has received an inquiry and talk about reestablishing communication before the problem develops into a written complaint. These conversations often focus on the communication rule (ORPC 1.4) emphasizing that this rule is much broader than the neglect rule. The feedback from clients and members is generally positive. Again, the number of these efforts is not adequately reflected in CAO's statistics, as staff members do not have the time to enter all of these inquiries into the database.

VI. CONCLUSION

To the CAO staff, and based on the statistical information that has been compiled to date, the program is working as designed. Staff continues to take steps to improve the quality of service they provide and the ongoing training provided by the office helps meet that goal.

As noted previously, while the goal of CAO is to process all complaints within 60 days, the process is slowed when CAO staff becomes engaged in a protracted investigation of any particular complaint. CAO staff continues to evaluate the amount of time that should be devoted to initial review, including whether every complex factual dispute constitutes sufficient evidence to merit a referral to DCO, which is better equipped and staffed for extended investigations.

CAO staff meets other week to review cases, policies, and generally discuss the operation of the office. We have also conducted several in-house mini continuing legal education programs for staff and will continue to do so in 2015. We continue to explore how CAO might become the first department at the bar to go “paperless” consistent with the bar’s commitment to become more sustainable. We will work with the bar’s information technology and other departments in developing this system. We recognize that this process may take time.

CAO staff is developing a public awareness program to educate members of the bar and the public about the availability and resources of the Client Assistance Office. One goal of the office in 2015 is to continue to expand our resolution capacities and offerings to lawyers and members of the public alike. Part of the goal of this expansion is to help members resolve ethical issues before they become disciplinary issues.

The idea that CAO might better deal with minor or correctible ethics concerns was raised in 2013. CAO believes shifting some authority to CAO to deal with minor matters, freeing DCO to deal with serious matters, is an efficient use of bar resources. CAO stands ready to participate in that discussion

Respectfully submitted,

Scott A. Morrill
CAO Manager and Assistant General Counsel
Oregon State Bar
Client Assistance Office
16037 SW Upper Boones Ferry Rd, Tigard, Oregon 97224
(503) 620-0222 or (800) 452-8260



Scott A. Morrill

CAO Manager and Assistant General Counsel

16037 SW Upper Boones Ferry Road

PO Box 231935

Tigard, Oregon 97281-1935

(503) 620-0222, or (800) 452-8260

www.osbar.org